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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/018,217	03/01/2002	Thomas William Bailey	912.40887X00	4657
7590 05/10/2004			EXAMINER	
Antonelli Terry Stout & Kraus 1300 North Seventeenth Street Suite 1800 Arlington, VA 22209			NGUYEN, HUNG T	
			ART UNIT	PAPER NUMBER
			2636	
DATE MAILED: 05/10/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/018,217

Applicant(s)

BAILEY ET AL.

Examiner

Hung T. Nguyen

Art Unit

2636

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 December 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>12/18/2001</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-5, 7, 9-12 & 14-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Robert Clements (GB 2,258,424).

Regarding claims 1 & 5, Clements discloses a packet as a cigarette container (5) comprises a miniature audio device in a form of an electronic sound producing means (4) and a switch or other actuatable means for actuating the device on opening the packet / pulling a tab, flap etc or even pulling a string [fig.2a-d, col.2, lines 15-22, col.3, lines 1-6 and col.6, lines 8-25 and col.8, lines 13-15].

Regarding claims 2-3, The container (5) having a medium (3) which may contain object as cigarettes or cigars [fig.2, col.6, lines 1-5].

Regarding claim 4, The packet as a cigarette container (5) comprises a miniature audio device in a form of an electronic sound producing means (4) because it is a very small device [fig.2a-d, col.2, lines 15-22 and col.8, lines 13-15].

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Regarding claims 7 & 9, The switch or other actuatable means / pulling a tab, flap etc or even pulling a string is connected to a tab (6) to be moved to gain to the access to the packet [fig.2a-d, col.6, lines 8-25].

Regarding claims 10-11, The switch or other actuatable means includes photoelectric means / light sensor (8) / proximity sensor [fig.3, col.7, lines 5-20].

Regarding claim 12, The switch is activated every time a newspaper being open at a specific page or pages, or to pull tab or other device being pulled and a carton of the container is opened or pulling a liner out of a box or even pulling a string [fig.2, col.2, lines 8-15 and col.6, lines 5-12]

Regarding claims 14-15, the miniature audio device in a form of an electronic sound producing means (4) gives a spoken message to a person that is programmed in a memory device which relate to cigarette container is inherently [fig.2a-d, col.2, lines 15-22 and col.8, lines 13-15].

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 6, 8 & 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Robert Clements (GB 2,258,424).

Regarding claim 6, Clements does not specifically disclose the packet has the switch is connected to the lid is connected by longitudinally extending connecting means as claimed by the applicant.

However, Clements discloses the switch or other actuatable means / pulling a tab, flap etc or even pulling a string is connected to a tab (6) to be moved to gain to the access to the packet [fig.2a-d, col.6, lines 8-25] and the switch is activated every time a newspaper being open at a specific page or pages, or to pull tab or other device being pulled and a carton of the container is opened or pulling a liner out of a box or even pulling a string [fig.2, col.2, lines 8-15 and col.6, lines 5-12].

Therefore, it would have been obvious to one having ordinary skill in the art to employ the system of Clement includes the switch is connected to the lid in any well-known technique for providing the same function as desired.

Regarding claim 8, Clements does not specifically disclose the movement of the tab is arranged to exposed or lift at least part or one of the packet contents.

Clement teaches the switch or other actuatable means / pulling a tab, flap etc or even pulling a string is connected to a tab (6) to be moved to gain to the access to the packet [fig.2a-d, col.6, lines 8-25].

Therefore, it would have been obvious to one having ordinary skill in the art to have an arrangement where activating the device by pulling a tab, such as known "lifting strip; would also result in exposing or lifting at least one part of the packet content.

Regarding claim 16, Clements does not specifically disclose the device is capable recording and subsequently relaying a message.

Clement teaches the miniature audio device in a form of an electronic sound producing means (4) gives a spoken message to a person that is programmed in a memory device which relate to cigarette container is inherently. The memory device could be an integrated chip operable to reproduce recorded messages which are programmed by the manufacturing or a user of the device [fig.2a-d, col.2, lines 15-22 and col.8, lines 13-15].

Therefore, it would have been obvious to one having ordinary skill in the art to have the miniature audio device activating audio messages to the user every time the cigarette container is opened which are programmed by the manufacturing or a user.

5. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Robert Clements (GB 2,258,424) in view of Levenbaum et al. (U.S. 5,203,472).

Regarding claim 13, Clement does not specifically disclose the switch is actuated on removal of a predetermined one or part of the packet contents, whereby a message relate to the quantity of the contents remaining the packet may be played.

Levenbaum teaches a cigarette dispensing apparatus includes a smoker and the dispenser contains programming the CPU (39) to signal the display (44) to present on command information concerning the number of cigarettes remaining in the cartridge (18) [col.5, lines 19-25].

Therefore, it would have been obvious to one having ordinary skill in the art to utilizing the teaching of Levenbaum in the system of Clement to provide a message relate to the quantity of the contents remaining the packet may be played.

6. Claims 17-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Robert Clements (GB 2,258,424) in view of Moorhead (U.S. 4,614,266).

Regarding claims 17-18, Clement does not specifically disclose the device is separated from the packet contents by at least one wall and the device are contained in separated compartments.

Moorehead teaches an attractive gift box and cover including sound producing means which chip (28) may be either beneath or above fabric liner (28) being actuated, in any case by movement of the box side walls from their upright to the outwarddy extended positions [fig.3, col.2, line 58 to col.3, line 10].

Therefore, it would have been obvious to one having ordinary skill in the art to utilizing the teaching of Moorehead in the system of Clement as the device is separated from the packet contents by at least one wall to provide an extra protection.

Conclusion


7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- Seeley (U.S. 5,575,383) Container having an audible signaling device.
- Amrod et al. (U.S. 6,298,990) Container with sound chip.
- Schaffner et al. (U.S. 6,559,768) Moment of impulse anti-smoking message system.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hung T. Nguyen whose telephone number is (703) 308-6796. The examiner can normally be reached on Monday to Friday from 8:00am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hofsass, Jeffery can be reached on (703) 305-4717. The fax phone number for this Group is (703) 872-9314.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 305-4700.



Examiner: Hung T. Nguyen

Date: May 7, 2004